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Frequently Asked Questions – Facilities Time and De-delegation of funding	
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1. Introduction

In light of the changes to the schools' funding formula, with effect from 1st April 2013 those schools that have voted to retain the allocation of monies for facilities time for Trade Union Representatives (not to de-delegate), or due to the schools block their phase is in is unable to vote to de-delegate the monies, must consider how each school will comply with its statutory obligations for the provision of facilities time for trade union representatives within school.

The following questions and answers document sets out the current legal position and highlights areas for Headteachers and Governing Bodies to consider to ensure that each school within the phase meets its legal obligations.

The content of the report is based on both national legislation in respect of trade union duties and the statutory provisions contained in the School Teachers Conditions of Service (Burgundy Book) and NJC Conditions of Service (Green Book) and the regulations with respect to the school's formula funding.

Q1. What is the legal position in relation to trade union facilities time and representation?

Union representatives have had statutory rights to reasonable paid time off from employment in order to carry out trade union duties and to undertake trade union training since the Employment Protection Act was issued in 1975. Union duties must relate to matters covered by collective bargaining agreements between employers and trade unions and relate to the union representative's own employer.

In general terms this means that properly appointed trade union representatives are entitled to paid time off to undertake the following activities:

Type of union representative	Rights
Union representatives appointed to engage in collective bargaining on behalf of their members. TULR(C)A, 1992	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • Protection against dismissal or detriment
Union learning representatives appointed to promote learning. TULR(C)A 1992	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • Protection against dismissal or detriment
Health and safety representatives appointed by trade unions in workplaces where unions are recognised. Safety Representatives and Safety Committees Regulations 1977	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • Facilities to help them perform their duties • Protection against dismissal or detriment
Information and consultation representatives. Information and Consultation of Employees	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Protection against dismissal or detriment

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Type of union representative	Rights
Regulations, 2004	
Pension representatives elected for the purpose of consultation over changes to pension arrangements. Occupational and Pensions Pension Scheme Regulations, 2006	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Protection against dismissal or detriment
TUPE representatives, where a trade union is recognised for collective bargaining purposes. TUPE, 2006 as amended.	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • Facilities to help them perform their duties • Protection against dismissal or detriment
Collective redundancy representatives where a trade union is recognised for collective bargaining purposes. TULR(C)A, 2006.	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • Facilities to help them perform their duties • Protection against dismissal or detriment

Q2. What Other documents should I refer to?

A In addition to the statutory position on paid time for trade union representatives and the ACAS Code of Practice, the Conditions of Service for School Teachers (Burgundy Book) and NJC Conditions of Service (Green Book) also provide regulations on this issue.

Appendix III – Agreement on Facilities for Representatives of Recognised Teachers’ Organisations of the Conditions of Service for Teachers (Burgundy book) sets out the collective agreement on facilities for representatives of recognised teachers’ organisations.

Part 2, Section 18 of the NJC Green Book (Non-Teachers) outlines the requirement to provide paid time off for trade union representatives to carry out their functions. These documents provide the framework on which all local authorities are required to base local arrangements for facilities time. Both the Burgundy and Green Book conditions are set out in Annex 1 of this document.

Copies of the relevant sections can be requested from human resources whose contact details are provided at the end of this document.

Q3. Which Trade Unions and Professional Associations are recognised by Central Bedfordshire Council?

A. The following are recognised by CBC for trade union activities and collective bargaining purposes (but not all receive an allocation):-

NEU, VOICE, NAHT, NASUWT, ASCL, GMB, UNISON, UNITE

Q4. What paid time off is a union representative entitled to?

A. The ACAS Code of Practice on Time Off for Trade Union Duties and Activities, 2010, which is relied upon in Employment Tribunal hearings, state a reasonable employer will provide paid time off for union representatives for the following activities:

- Collective bargaining
- Working with the management side
- Communicating with union members

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- Liaising with the trade union
- Handling individual disciplinary and grievance matters on behalf of employees.

Q5. What is 'collective bargaining'?

A. ACAS advises that the term 'collective bargaining' includes the following activities:

- Negotiating terms and conditions of employment, including hours of work, pay, holidays, sick pay, pensions, learning, equality and diversity, notice and the working environment
- Matters relating to recruitment, HR planning and redundancy or dismissals for whatever reason, including redundancy
- Allocation of work or the duties of employment including job grading, job evaluation, job descriptions, flexible working practices and work/life balance
- Matters relating to discipline
- Representation of members at hearings
- Participation in the negotiation or consultation for an employer and/or multiple employers.

Q6. What are the current arrangements within the Central Bedfordshire Council?

A CBC has a Facilities Agreement (Schools) with the recognised Trade Unions which sets out the agreements reached in order for them to discharge their roles. A copy of the current Facilities Agreement (Schools) can be found on the CBC Schools Portal.

Q7. Do the trade union representatives in CBC come from the workforce?

A. Yes, a paid official may be based in any school within the county and can be called on to represent union members across the sector, for example a union representative working in a secondary school could represent a teacher in a maintained primary school and vice versa.

Q8. Does the employing school of a representative receive re-imbusement?

A. Yes, the school where the trade union representative is based receives reimbursement from the de-delegated facilities time budget to cover his/her time spent on trade union duties.

Q9. What duties are undertaken and funded in Central Bedfordshire?

A.

- regular attendance at formal consultation and negotiating meetings with officers and/or elected members e.g. Education Employee Relations (EER) Working Party etc;
- attendance at policy development meetings with officers e.g. to develop the model HR policies used in schools (recent examples include the sickness absence policy; the paternity, maternity and shared parental leave policy etc);
- attendance at case work meetings with head teachers, governors and others in schools e.g. disciplinary hearings, redundancy consultations, TUPE meetings, etc.

Q10. What are the options in relation to the de-delegation of facilities funding?

A. Under the latest reforms to the school funding formula, from April 2013 onwards schools have the following options in relation to trade union facilities budgets:

- a) retain facilities funding in individual school budgets;
- b) de-delegate the funding and assign it to the local authority to hold on behalf of schools.

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Q11. If my school wishes to request de-delegation will we retain the current facilities arrangements with access to county representatives and collective bargaining?

A Yes, representatives would continue to work with schools and support their members in schools with employee relation case work e.g. disciplinary hearings, redundancy consultations, TUPE meetings, etc. For all maintained schools' consultation on HR policy and practice is undertaken at county level which avoids the need for each school to consult on every issue. Under this approach, model policies and working practices are discussed and agreed with the recognised trade unions, which are then notified to schools and their personnel providers.

Governing Bodies are advised to adopt the collectively negotiated policies and procedures to ensure consistent practice in schools across the council.

Q12. What if my school chooses not to de-delegate?

An Experienced local representatives/ branch secretaries would not attend case work meetings.

Each recognised trade union of CBC represented in a school could decide to appoint a local 'steward', who would be entitled to paid time off to carry out trade union duties. In practice, this could result in an overall increase in the monies paid to the trade unions due to the loss of economies of scale through the work of the county representatives and may lead to inconsistencies emerging in practice between schools.

It is likely that regional officers of the trade unions may wish to attend to particular casework, particularly where locally appointed officers are inexperienced. Therefore, Headteachers and Governors will need to be aware that this may lead to delays in managing the timing of disciplinary, grievance and capability hearings, as regional officers from the trade unions will have limited availability to attend school hearings.

This is also likely to affect discussions over TUPE transfers, school restructures and reductions in staffing, which often require an early response in order to meet teacher notice dates.

It is advised therefore that the setting of meetings or planning of consultation processes in relation to the above will need to be arranged in advance of current timescales in order to ensure appropriate representation in accordance with the law is afforded to all employees and trade unions.

You are strongly advised to speak to your HR provider before deciding not to de-delegate.

Q13. Will each school which chooses not to de-delegate be required to enter into a facilities agreement with the recognised trade unions?

A. The collective facilities agreement that is currently in place will remain until 31st March 2019. Schools whose funding is not dedelegated back to the Council from 1st April 2019 should consider how they plan to manage the facilities time for trade union representatives within their school.

It is also advised that schools consider a facilities agreement with the recognised trade unions ahead of the 1st April 2019 when the current arrangements in place with county representatives would come to an end.

Q14. Where can my school receive further advice on this matter?

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A It is advised you contact your HR provider to obtain further advice and guidance in relation to consulting with the recognised trade unions on a bespoke facilities agreement for your school. Should you wish to discuss the information contained within the questions and answers document please e-mail David Waller, HR Policy & Implementation Manager at david.waller@centralbedfordshire.gov.uk or telephone 0300 300 6053.